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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment to the Commission's )  
Regulatory Policies Governing )  
Domestic Fixed Satellites and )  
Separate International Satellite )  
Systems )  
)

IB Docket No. 95-41

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**REPLY COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.**

Gary M. Epstein  
John P. Janka  
David M. Leive  
Teresa D. Baer  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 637-2200

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## **SUMMARY**

All of the commenters in this proceeding uniformly support the Commission's proposal to regulate all U.S.-licensed geostationary fixed-service satellites ("FSS") under a unified regulatory regime in which they can provide a full range of domestic and international services. The commenters agree with Hughes Communications Galaxy, Inc. ("HCG") that, in order for U.S. FSS licensees to compete effectively on a global scale, they must have sufficient flexibility to provide service anywhere within their coverage areas without having to obtain additional authorizations from the Commission.

A few commenters nevertheless have suggested that the Commission limit the adoption of its proposal in certain respects. There is no basis at this time for including conditions in the proposed policy that would restrict one set of FSS operators or another from competing. First of all, it would be premature to restrict the implementation of the Commission's proposal, based on mere speculation as to how certain operators may or may not exercise the much-needed flexibility that the proposed policy will give them. The Commission should not design its new policy to require U.S. FSS licensees to ensure the availability of domestic capacity. Nor should the Commission tilt the playing field in favor of either current domestic or separate system operators that seek to delay or otherwise restrict the others' ability to compete.

In addition, the commenters generally support the need to reconcile existing policies on financial qualifications, regulatory classifications, and earth station licensing. The Commission should reject the efforts of existing separate system operators to continue to use a two-stage financial showing; rather, the Commission should apply strict financial

qualification rules to all FSS applicants to prevent the "warehousing" of orbital locations by speculative applicants. Furthermore, the Commission should reject arguments to retain its current policy of authorizing non-common carrier service on a case-by-case basis, since allowing all operators to elect whether to provide service on a common carrier or non-common carrier basis will give them needed flexibility. All commenters agree with the Commission's proposal to allow all U.S.-licensed earth stations to communicate with all U.S.-licensed satellites.

The Commission also should decline at this time to impose reciprocity conditions on foreign satellites that seek to serve the United States. The Commission should exercise caution before including a reciprocity component in its new policy. Instead, the Commission should continue to keep U.S. markets open and raise reciprocity concerns only as specific problems arise in particularly egregious situations.

Finally, the commenters virtually unanimously agree that the Commission should not complicate this proceeding by considering issues that are only peripherally related to the core FSS issues under review. Thus, the Commission should defer to other proceedings questions related to DBS, MSS, and DARS, as well as to allowing Comsat to serve the U.S. domestic market using Intelsat and/or Inmarsat capacity.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY . . . . .	i
I. THERE IS UNANIMOUS AGREEMENT THAT THE COMMISSION SHOULD ELIMINATE THE EXISTING REGULATORY DISTINCTIONS BETWEEN DOMESTIC AND SEPARATE SYSTEM SATELLITES . . . . .	2
II. THE PARTIES AGREE THAT THE COMMISSION SHOULD RECONCILE CERTAIN DIFFERENCES IN THE REGULATORY TREATMENT OF DOMESTIC AND SEPARATE INTERNATIONAL SATELLITE SYSTEMS . . .	9
III. THE COMMISSION SHOULD NOT IMPOSE RECIPROCITY CONDITIONS ON FOREIGN SATELLITE SYSTEMS BUT SHOULD ADDRESS SUCH CONCERNS IN APPROPRIATE CASES . . . . .	13
IV. THE COMMISSION SHOULD REVIEW PERIPHERAL ISSUES IN OTHER PROCEEDINGS . . . . .	16
CONCLUSION . . . . .	17

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**REPLY COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.**

Hughes Communications Galaxy, Inc. ("HCG") submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") proposing to regulate all U.S.-licensed geostationary fixed-service satellites under a unified regulatory scheme in which they can provide a full range of domestic and international services. In its opening comments, HCG demonstrated that the transborder policy and the distinctions in existing Commission policy between domestic and separate international FSS systems artificially and unnecessarily restrict FSS operators' activities and impede competition both in the United States and abroad. HCG therefore endorsed the Commission's proposal to reconcile the existing regulatory treatment of domestic and separate system satellites, and urged the Commission to adopt that proposal promptly. In these Reply Comments, HCG reiterates its support for prompt adoption of the Commission's proposal.

All of the opening comments filed in this proceeding likewise show unanimous support for the Commission's proposal. While some commenters have suggested that the

Commission impose certain conditions on the implementation of the proposal -- conditions that are entirely self-serving and inappropriate in any event -- or have sought to include in this rulemaking proceeding issues that are peripheral to the core FSS issues under review, no one has offered any good reason why the Commission should not proceed immediately to adopt its proposal to streamline its regulatory policies. HCG sets forth below its views on the comments filed by others in this proceeding, and shows that eliminating the existing regulatory obstacles will enhance the opportunities of U.S.-licensed satellite providers to compete in the provision of FSS services on a global scale.

I. THERE IS UNANIMOUS AGREEMENT THAT THE COMMISSION SHOULD ELIMINATE THE EXISTING REGULATORY DISTINCTIONS BETWEEN DOMESTIC AND SEPARATE SYSTEM SATELLITES.

Abolishing the existing artificial distinctions between domestic and international FSS systems, including the transborder policy, is critical to the competitiveness of U.S.-licensed FSS operators. All of the commenters in this proceeding uniformly agree that, in order for U.S. licensees to compete effectively both domestically and internationally, they must have sufficient flexibility to provide service anywhere within their coverage areas without having to obtain additional authorizations from the Commission. Nonetheless, a few commenters have suggested that the Commission limit the adoption of its proposal in certain respects. The Commission should not impose conditions on the implementation of its new policy at this time.

No one disputes that the time has come to reform and streamline the Commission's differing regulatory policies governing domestic and separate system satellites. The commenters agree that, as Intelsat gradually has relaxed its restrictions against

competitive separate satellite systems, the Commission's policies have become outdated, and have impeded U.S. FSS licensees' ability to respond in a timely manner to changing market conditions and customer satellite communications needs. Particularly as other countries and organizations increasingly deploy and expand their own satellite systems, removing the existing unnecessary regulatory distinctions will give FSS operators flexibility to respond to their customers' satellite communications needs, and in turn will promote global competition.

Some commenters nevertheless ask the Commission to include various conditions in the proposed policy that would restrict one set of FSS operators or another from competing. It would be premature to consider imposing such conditions on the implementation of the Commission's proposal, based on nothing more than speculation as to how certain operators may or may not exercise the much-needed flexibility that the proposed policy will give them. After all, full-scale implementation of the Commission's proposal will take some time. As the Commission correctly recognizes (Notice ¶ 22), domestic and international satellites today generally are located in the portions of the orbital arc that provide the best coverage for their respective services. Some domestic licensees may operate satellites that currently are technically capable of providing international service from their existing orbital locations (subject to obtaining landing rights in the countries that they seek to serve), and they may have customer needs for such service at this time. Some of the existing generation of satellites, however, may not be technically capable of providing international service or may have no current customer demands for such service. Thus, to the extent that particular problems arise with the Commission's policy in the future, the Commission should address those matters on a case-by-case basis.

Furthermore, it would be inappropriate at this time to adopt the conditions that some commenters request. For example, a few commenters ask the Commission to design its policy to ensure that U.S.-licensed FSS operators continue to make domestic capacity available. Home Box Office ("HBO") urges the Commission to ensure that "prime" domestic orbital locations remain devoted to domestic service, by requiring U.S.-licensed satellites in the so-called "domestic" arc to provide domestic service in the event of a shortage of that capacity or by conditioning approval to provide international service on a showing that sufficient domestic capacity is available. (HBO Comments at 6-7.) In their joint comments, Capital Cities/ABC, CBS, NBC, and Turner Broadcasting (the "Networks") similarly urge that, due to the current shortage of C band capacity, the Commission should require all U.S. FSS licensees to originate or terminate all international communications in the United States. (Networks Comments at 9.)<sup>1/</sup>

Concerns about the availability of domestic capacity should not drive the adoption of the Commission's proposed policy. As HCG noted in its opening comments (HCG Comments at 14 n.17), the Commission never has reserved a portion of the orbital arc for service from domestic satellites. While domestic satellites have tended to be located in the 64° to 105° W.L. and 121° to 143° W.L. ranges, that is only because the earth station angles that these locations provide make them especially suitable for U.S. domestic coverage.

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<sup>1/</sup> The Networks' proposal to require all U.S. FSS licensees to originate or terminate all communications in the United States is fundamentally inconsistent with the existing Separate Systems policy, under which separate system operators may provide purely foreign domestic service.



Moreover, the Commission can best address the existing C band capacity shortage by promptly processing the pending new satellite applications in the current FSS processing round, and the pending FSS replacement applications, thereby enabling existing U.S. licensees to expand and replace their fleets and new competitors to enter the market. The Commission's processing round procedures result in alternating periods of excess capacity and capacity shortages, and there now is a domestic C band capacity shortage that soon will be corrected. Applicants have proposed more than enough new and replacement domestic capacity in the pending round, and there is no reason to think that market forces will not meet the current demand.<sup>2/</sup> Should a future shortage of domestic capacity develop that is not corrected, the Commission will remain free to address that matter in connection with new applications for future satellites, but the Commission should not now unduly constrain the use of FSS capacity to meet growing international service needs.<sup>3/</sup> In short, there is no reason to place conditions on the use of U.S. satellites to attempt to address domestic capacity issues.

In an attempt to tilt the playing field in their favor, GE American Communications, Inc. ("GE") and PanAmSat Corp. ("PanAmSat") each seeks to have the

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<sup>2/</sup> As AT&T Corp. ("AT&T") correctly argues in its comments, resolution of this proceeding should not delay the processing of pending new satellite applications in the current domestic FSS satellite processing round. (AT&T Comments at 3-4.) Indeed, in light of the immediate need for additional C band capacity for domestic use, further delaying the processing round could have particularly severe implications. All applicants were provided an adequate opportunity to file applications for new satellites in the current round, and a number of new applicants did so.

<sup>3/</sup> Thus, there is no reason to consider the proposal of General Communication, Inc. ("GCI") to require all satellites "in the U.S. arc" to provide "predominately [sic] U.S. coverage." (GCI Comments at 4 n.6.)

Commission impose equally improper conditions on their potential competitors. GE urges the Commission to give the current domestic operators a two-year headstart in the provision of international services over current separate system operators' initiation of domestic service, on the ground that domestic operators need two years to obtain the landing rights necessary to provide competitive international service. (GE Comments at 9-11.) There simply is no reason to delay implementation of the Commission's proposed policy reforms while GE seeks to obtain landing rights in other countries. Domestic operators such as GE always have been able to apply for additional authorization to provide international service, and the fact that some of them never before sought such authorization, and only now will be seeking landing rights for the first time, should not keep separate system operators from competing in the provision of domestic U.S. service.

There similarly is no basis to accord separate system operators special treatment. PanAmSat urges that, before proceeding further, the Commission must "come to grips with the highly concentrated nature of the U.S. domestic satellite market . . . ." (PanAmSat Comments at 1.) Specifically, PanAmSat argues that, since separate systems cannot offer full U.S. domestic service from their current locations, and U.S. domestic satellites are uniquely able to expand their coverage to Latin America, the Commission should ensure that separate systems have immediate access to orbital locations in the so-called "domestic" arc, including at least one 50-state slot. (PanAmSat Comments at 2-7.) PanAmSat further contends that, if enough locations are not available to satisfy the demand of separate system operators to provide U.S. domestic service, the Commission should "cap"

the number of "domestic" orbital locations to which the Commission may assign domestic satellites. (PanAmSat Comments at 2.)

The Commission should reject PanAmSat's proposals. First of all, PanAmSat would have the Commission erroneously believe that, immediately upon adoption of the Commission's proposal, domestic operators will turn all of their satellites to compete with it in Latin America. As noted above, this ignores the facts that certain satellites are not technically configured to provide Latin American services and that much existing domestic capacity already is committed to U.S. service on a long-term basis.

Second, if PanAmSat believes that existing domestic satellites will be immune from effective competition in the United States if PanAmSat is unable to compete there,<sup>4/</sup> PanAmSat plainly is wrong. The Commission repeatedly has found that there is vigorous competition in the relevant market -- the market for domestic interexchange services.<sup>5/</sup> Furthermore, Orion Network Systems, Inc., Loral Aerospace Holdings, Inc., and Echostar Satellite Corporation all have applied to provide domestic FSS satellite services. Argentina, Cuba, Colombia, Mexico, and Brazil also all have satellites, or plans for satellites, the coverage patterns of which include some or all of the United States.

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<sup>4/</sup> PanAmSat's expressions of concern for the domestic market ring especially hollow since, if PanAmSat really were as interested in serving the U.S. domestic market as it claims, it would have applied for a domestic satellite authorization in the current domestic satellite processing round, as Orion Network Systems, Inc., another separate system operator, did.

<sup>5/</sup> See International Business Machines Corp., 5 FCC Rcd 1655, 1656 (1990); Western Union Corp., 3 FCC Rcd 6792, 6794 (1988); see also Contel Corp., 6 FCC Rcd 1003, 1005 (1991); Competitive Carrier Services, Fourth Report and Order, 95 F.C.C.2d 554, 562-75 (1983).

Third, PanAmSat's proposal to cap the number of "domestic" locations assigned to each operator, in order to foster international competition among U.S. licensees, makes no more sense than requiring PanAmSat and other separate system operators to divest themselves of "prime" Atlantic, Pacific, and Indian Ocean Region frequencies in the congested parts of the orbital arc so that HCG, GE, and AT&T can improve their ability to compete internationally.<sup>6/</sup> PanAmSat has chosen to develop the international market to the exclusion of the domestic market, and there is no reason that the FCC should turn back the clock just to suit its convenience.

Finally, PanAmSat also fails in its argument that, in order to ensure that domestic satellite operators do not obtain an unfair competitive advantage and that there is sufficient domestic capacity, the Commission should implement its proposal over a transition period during which time domestic operators would be required to seek explicit Commission approval before beginning to provide international service. (PanAmSat Comments at 6-7.) The transition period that PanAmSat seeks, however, would leave current domestic FSS operators in precisely the same situation in which they find themselves today -- able to obtain

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<sup>6/</sup> The Commission likewise should disregard PanAmSat's argument that, if domestic satellite operators are allowed to offer international service, the Commission should take steps, such as imposing structural separation requirements, to ensure that HCG does not exercise its "market power" to gain an unfair advantage over separate system operators. (PanAmSat Comments at 5 n.13.) HCG has responded to PanAmSat's argument in the past, showing that the Commission unambiguously has concluded that HCG does not have market power in the relevant markets, and that there is no evidence of anti-competitive abuses by HCG in any event. See Response of Hughes Communications Galaxy, Inc. to Submissions of PanAmSat, L.P. and AT&T Corp., in Hughes Communications Galaxy, Inc., FCC File Nos. 33-DSS-ML-94, CSS-94-014-MP/ML (filed Aug. 4, 1994).

international authority on a case-by-case basis -- while giving separate systems carte blanche to compete in the United States.

In short, to the extent that questions may arise in the future regarding the sufficiency of domestic capacity, or the competitiveness of domestic or international satellite services, the Commission remains free to address those situations in the proper context. Attempting to resolve such hypothetical problems at this time only will delay implementation of a Commission policy that holds the potential to enhance significantly the global competitiveness of U.S. FSS licensees.<sup>2/</sup>

## **II. THE PARTIES AGREE THAT THE COMMISSION SHOULD RECONCILE CERTAIN DIFFERENCES IN THE REGULATORY TREATMENT OF DOMESTIC AND SEPARATE INTERNATIONAL SATELLITE SYSTEMS.**

Like HCG, most commenters fully support the Commission's proposed policy changes with respect to financial qualifications, regulatory classifications, and earth station licensing. A few differ, however, on the details of how the Commission should reconcile the existing policy distinctions. HCG continues to support the Commission's original proposals.

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<sup>2/</sup> Capital Cities/ABC and the Motion Picture Association of America, Inc. express concern that allowing U.S.-licensed satellites to provide a wider range of services may increase the chances for copyright enforcement problems in foreign countries. In an attempt to aid their enforcement efforts, they request that the Commission impose additional regulatory burdens on satellite operators. While HCG appreciates these concerns, it does not believe that satellite operators should be accountable for the illegal activities of some programming distributors. Moreover, as HBO notes, the copyright holders generally are free to choose a different satellite for their distribution needs if they believe that the international coverage of a particular satellite presents a problem. In those cases where the copyright holders do not have control over the distribution of their programming (i.e., distribution by a compulsory copyright license), HCG does not object to the Commission's continuing its current practice of noting that authority to serve foreign locations does not include authority to distribute programming where appropriate copyright clearances or protections do not exist. See, e.g., Hughes Communications Galaxy, Inc., 7 FCC Rcd 8582 (1992); Southern Satellite Systems, Inc., 6 FCC Rcd 3542 (1991), corrected, 6 FCC Rcd 4262 (1991).

First of all, with respect to the Commission's proposal to require all FSS applicants to make an initial full financial showing instead of the less strict two-step showing that separate system operators currently must satisfy (Notice ¶ 29), the only opposition to the Commission's proposal comes from the three separate system operators that currently are subject to the lower financial qualifications standard: Columbia Communications Corp. ("Columbia"), Orion, and PanAmSat. While they urge that a two-stage showing is necessary for "international satellites," because of both the difficulty of meeting the strict financial qualification standard and alleged lingering uncertainties in the international marketplace,<sup>8/</sup> Orion and PanAmSat acknowledge that there is no basis for treating "domestic" satellite applicants differently. Rather, they suggest that, for purposes of regulatory parity, the Commission extend the lesser showing to all FSS applicants.<sup>9/</sup>

The problems that international FSS satellite service providers face, however, simply do not justify using a two-stage financial showing for some or all FSS applicants. The Commission has allowed separate system operators initially to satisfy a lower financial standard solely because of the uncertainty once caused by the Intelsat Article XIV(d) consultation process.<sup>10/</sup> But as the successful coordinations of all three separate system operators demonstrates, the past uncertainty caused by the Intelsat Article XIV(d)

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<sup>8/</sup> Columbia Comments at 6-7; Orion Comments at 6-9; PanAmSat Comments at 7-8.

<sup>9/</sup> Columbia Comments at 9; PanAmSat Comments at 8.

<sup>10/</sup> Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1165 n.152 (1985) ("Separate Systems") ("The only reason for our two-stage approach here is the uncertainty caused by the INTELSAT Article XIV(d) consultation process."), reconsideration, 61 Rad. Reg. 2d (P&F) 649 (1986), further reconsideration, 1 FCC Rcd 439 (1986).

consultation process no longer exists. Thus, if applicants are allowed to tie up orbital locations that are needed by others while they seek financing for their proposals, there is a serious risk that the implementation of service will be delayed. Indeed, the Commission's past experience with underfinanced FSS applicants that have been allowed to proceed to licensing without a firm financial showing should lead the Commission to conclude that it is especially important to apply strict financial qualification rules to all FSS applicants to prevent the "warehousing" of orbital locations by speculative applicants in the FSS service.<sup>11/</sup>

Second, while no commenters dispute that separate systems should be allowed to provide service on a non-common carrier basis, a few suggest that, instead of allowing applicants to elect their regulatory classification, the Commission should retain its current policy of authorizing non-common carrier service on a case-by-case basis. (See, e.g., Networks Comments at 11-13; GCI Comments at 2-4.)<sup>12/</sup> Particularly in light of the fact

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<sup>11/</sup> See, e.g., United States Satellite Systems, Inc., 103 F.C.C.2d 888 (1985); Rainbow Satellite, Inc., 103 F.C.C.2d 848 (1985); Advanced Business Communications, Inc., File Nos. 805-DSS-MP-84, 2187-DSS-MP/ML-84 (released Aug. 29, 1985).

None of the "uncertainties" in the international marketplace that FSS operators face is any more significant than those facing deployment of the Big LEO systems in the mobile satellite service (in fact, the uncertainties may be significantly less). The Commission recently adopted a one-step firm financial test for those global systems and there is no reason to apply a weaker standard here. See Amendment of the Commission's Rules To Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5948-54 (1994).

<sup>12/</sup> The Networks urge the Commission to retain the existing case-by-case determination of domestic FSS operators' individual requests to provide non-common carrier services because they complain that operators providing service on a non-common carrier basis recently have increased the price of occasional capacity. (Networks Comments at 11-13.)

(continued...)

that domestic operators routinely request authority to provide non-common carrier service under the Commission's transponder sales policy,<sup>13/</sup> and since the Commission has not denied such a request in over ten years, there is little reason to think that retaining this regulatory requirement will advance any policy goals. Allowing all FSS operators to elect whether to provide service on a common carrier or non-common carrier basis will give operators the flexibility that they need in pursuing their business plans to provide competitive service without unnecessary regulatory restrictions. The Commission's proposal also is fully consistent with the Commission's regulation of other areas, where it allows operators to elect whether to provide service on a common carrier or non-common carrier basis.<sup>14/</sup>

Finally, all commenters are unanimously of the view that, if U.S.-licensed FSS operators may offer both domestic and international service, there is no reason to retain a distinction between domestic and international earth stations using U.S.-licensed space segment. The Commission therefore should adopt its proposal to allow all U.S.- licensed

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<sup>12/</sup>(...continued)

As described above, because satellites are launched in phases, there are periods of excess capacity and periods of shortages, with prices for occasional use reflecting the availability of capacity. Prices for occasional use transponders previously reflected an oversupply in the availability of those transponders, and that oversupply since has corrected itself. The upcoming launch of several replacement satellites also will make a large number of new transponders available within the next year. The Networks' complaint simply arises out of their unwillingness to pay market prices for occasional satellite transponder use in the meantime.

<sup>13/</sup> See Domestic Fixed-Satellite Transponder Sales, 90 F.C.C.2d 1238 (1982), affirmed, Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

<sup>14/</sup> See, e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, 90 F.C.C.2d 676, 708-11 (1982) (direct broadcast satellites); 47 C.F.R. ¶ 73.667(b) (TV subsidiary communications services).



earth stations to communicate with all U.S.-licensed satellites, and to use the designation "ALSAT" to identify all of those satellites. (Notice ¶ 36.)<sup>15/</sup>

**III. THE COMMISSION SHOULD NOT IMPOSE RECIPROCITY CONDITIONS ON FOREIGN SATELLITE SYSTEMS BUT SHOULD ADDRESS SUCH CONCERNS IN APPROPRIATE CASES.**

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A number of commenters address the Commission's questions in the Notice regarding whether it should permit non-U.S.-licensed satellites to serve the United States, and whether it should impose the more rigorous technical requirements applicable to U.S.-licensed satellites, such as 2° spacing, on those foreign satellites. While some commenters specifically argue that the Commission should establish a reciprocity requirement in this proceeding,<sup>16/</sup> others have taken a contrary position. HCG does not believe that the Commission should address reciprocity concerns in this proceeding.

HCG generally supports the views expressed by Orion that the Commission should exercise caution before including a reciprocity component in its new policy. (Orion Comments at 4.) As Orion correctly notes, reciprocity policies can result in retaliation by foreign governments, which in turn can impede U.S. companies from competing abroad. Moreover, it is difficult to measure the "openness" of foreign regulatory regimes, many of

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<sup>15/</sup> A number of commenters urge the Commission to expand the "ALSAT" designation to include the authority to communicate with foreign satellite systems without further authorization. (See, e.g., Charter Communications, Inc. Comments at 8; ICG Wireless Services, Inc. Comments at 3-4; Networks Comments at 15-16; Transworld Communications (U.S.A.), Inc. Comments at 7; Washington International Teleport Comments at 2; WorldCom, Inc. ("WorldCom") Comments at 3.) HCG has no objection to expanding the ALSAT designation in this manner.

<sup>16/</sup> See, e.g., AT&T Comments at 14-18; PrimeStar Partners, L.P. Comments at 2-3; Rockwell International Corporation Comments ("Rockwell") at 2.

which only now are beginning to allow foreign participation. HCG therefore agrees with Orion that the Commission should continue to keep U.S. markets open and raise reciprocity concerns only as problems arise in particularly egregious situations.<sup>17/</sup>

The Mexican Secretary of Communications and Transportation ("SCT") and Telecomunicaciones de Mexico ("Telecomm") in particular contend that reciprocity issues should be central to this proceeding. They urge that, before granting licenses to FSS operators to provide service to Mexico, the Commission should take Mexican reciprocity requirements into consideration.<sup>18/</sup> HCG appreciates the concerns of the SCT and Telecomm, and reiterates that it intends to provide service in Mexico only if and when appropriate Mexican authorization is obtained. HCG also points out that the United States already has had an open satellite market, and under Commission policy Mexican satellite operators are always free to serve the United States. Indeed, the United States has long-standing rules and policies that allow international foreign domestic satellite systems, including direct-to-home video distribution services, to serve the United States, subject only

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<sup>17/</sup> One such egregious situation presently is before the Commission. Specifically, DIRECTV, Inc. has sought a declaratory ruling that AT&T is not permitted to carry a Canadian direct-to-home satellite service and transmit that service to homes in the United States, so long as the Canadian Radio-television Telecommunications Commission prohibits U.S. companies such as DIRECTV from competing in Canada. See Transborder Authorization of AT&T Corp. to Provide Canadian Direct-to-Home Satellite Services in the United States, FCC File No. 107-SAT-MISC-95.

<sup>18/</sup> The SCT and Telecomm also urge the Commission to reopen the 1988 Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States, and to address in those discussions the distribution of orbital assignments between the United States and Mexico. (SCT Comments at 9-11; Telecomm Comments at 17.) These commenters raise concerns that the Commission may wish to address in the context of bilateral and trilateral negotiations, and HCG encourages the Commission to confer with the Mexican authorities with respect to these matters.

to earth station licensing requirements.<sup>19/</sup> HCG agrees with the SCT and Telecomm that the Commission should be sensitive to the concerns of Mexico and other countries as it proceeds to implement its proposals in this proceeding. As is the case with separate systems today, the Commission appropriately has proposed to condition authority to provide international service on a satellite operator's having obtained the necessary landing rights from the country to which it seeks to provide service, and on having completed ITU coordination of the frequencies used for the international service.

Finally, some commenters urge the Commission to require foreign systems that wish to serve the United States to comply with the Commission's 2° spacing policy and other technical requirements.<sup>20/</sup> As a practical matter, the Commission cannot unilaterally impose its technical requirements, such as 2° spacing, on other countries, and if the United States were to attempt to do so, it likely would face demands by those countries that U.S.-licensed satellites meet local requirements that U.S. systems may not be able to satisfy.<sup>21/</sup> These types of issues are best addressed through the development of new approaches within the framework of the ITU, and pending the development of these approaches, HCG believes that these matters are most appropriately handled on a case-by-case basis in the course of satellite coordination with other countries.

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<sup>19/</sup> See, e.g., 47 C.F.R. § 25.131; Amendment of Section 25.131 of the Commission's Rules and Regulations To Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, 8 FCC Rcd 1720 (1993); Communications Satellite Corporation, 7 FCC Rcd 6028 (Com. Car. Bur. 1992), application for review pending.

<sup>20/</sup> See, e.g., AT&T Comments at 19-20; HBO Comments at 10-11; Orion Comments at 10-11; Rockwell Comments at 2-3.

<sup>21/</sup> See Separate Systems, 101 F.C.C.2d at 1168.

#### IV. THE COMMISSION SHOULD REVIEW PERIPHERAL ISSUES IN OTHER PROCEEDINGS.

Although the Commission's Notice presented a well-developed FSS proposal that commenters uniformly support, the Notice did not even begin to address the wide range of issues that would be relevant to expanding the proposed FSS policies to other services, such as the direct broadcast satellite ("DBS") service, mobile satellite service ("MSS"), and digital audio radio services ("DARS"), or to allowing Comsat to serve the U.S. domestic market using Intelsat and/or Inmarsat capacity. The comments filed in this proceeding do not address these difficult issues adequately either. To the contrary, the commenters virtually unanimously agree that consideration of these other issues should not delay the resolution of the core FSS issues in this proceeding.<sup>22/</sup> Indeed, the issue of Comsat's provision of U.S. domestic service is particularly complicated, involves many issues that are not relevant here, and is under review in a number of other pending proceedings.<sup>23/</sup> Thus, rather than unnecessarily complicate this proceeding with side issues that are only tangentially related to the FSS issues under review, the Commission should defer its DBS,

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<sup>22/</sup> See, e.g., GE Comments at 11-13; IDB Mobile Communications, Inc. Comments; Loral/Qualcomm Partnership, L.P. Comments; Motorola Satellite Communications, Inc. Comments; Networks Comments at 17-19; Orion Comments at 5; TRW Inc. Comments; WorldCom Comments at 4.

<sup>23/</sup> See, e.g., Application of COMSAT Corporation for Authority To Provide U.S. Domestic Land and Aeronautical Mobile Satellite Services, FCC File No. ITC-95-341; Application of COMSAT Corporation for Authority To Participate in the Procurement of Facilities of the I-CO Global Communications Limited System, FCC File No. 106-SAT-MISC-95. Prior to the resolution of Comsat's proposal to use Intelsat capacity to serve the United States, Comsat would be free to use its U.S.-licensed satellite capacity to provide the full range of domestic and international services just as any other U.S.-licensed satellite operator would be free to do.


MSS, and Comsat questions, along with the questions relating to digital audio radio services that some commenters have raised, to other proceedings.

### **CONCLUSION**

For the foregoing reasons, and the reasons stated in HCG's initial comments in this proceeding, the Commission should adopt its proposal to eliminate the transborder policy and to treat all U.S.-licensed FSS satellites under a single regulatory scheme in which they can provide a full range of domestic and international services without the need to obtain additional FCC authorizations. In addition, the Commission should adopt its proposals with respect to financial qualifications, regulatory classifications, and earth station licensing.

Respectfully submitted,

HUGHES COMMUNICATIONS  
GALAXY, INC.



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Gary M. Epstein  
John P. Janka  
David M. Leive  
Teresa D. Baer  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 637-2200

June 23, 1995

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 23rd day of June, 1995, caused copies of the foregoing "Reply Comments of Hughes Communications Galaxy, Inc." to be served by hand on the following:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Scott Blake Harris  
Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 830  
Washington, D.C. 20554

James L. Ball  
Associate Chief (Policy)  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

Thomas S. Tycz  
Chief  
Satellite and Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 811  
Washington, D.C. 20054

Cecily C. Holiday  
Deputy Division Chief  
Satellite and Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 520  
Washington, D.C. 20554

Fern J. Jarmulnek  
Chief  
Satellite Policy Branch  
Satellite and Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street N.W.  
Room 518  
Washington, D.C. 20554

John M. Coles  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

Kathleen Campbell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

and to be served by first class mail, postage prepaid, on the following:

Philip V. Otero  
Alexander V. Humphrey  
GE American Communications, Inc.  
1750 Old Meadow Road  
McLean, Virginia 22102

Randolph J. May  
Timothy J. Cooney  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Charlene Vanlier  
Capital Cities/ABC, Inc.  
6th Floor  
21 Dupont Circle  
Washington, D.C. 20036

Howard Monderer  
National Broadcasting Company, Inc.  
Warner Building, 11th Floor  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Mark W. Johnson  
CBS Inc.  
Suite 1000  
1634 I Street, N.W.  
Washington, D.C. 20006

Bertram W. Carp  
Turner Broadcasting System, Inc.  
Suite 956  
820 First Street, N.E.  
Washington, D.C. 20002



Richard H. Shay  
Vice President, Corporate and Legal Affairs  
April McClain-Delaney  
Director of Regulatory Affairs  
Orion Network Systems, Inc.  
2440 Research Boulevard  
Suite 400  
Rockville, Maryland 20850

Mark C. Rosenblum  
Peter H. Jacoby  
Judy Sello  
AT&T Corp.  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920

Carlos Mier y Teran Ordiales  
Director General  
Telecomunicaciones de Mexico  
Eje Central Lazaro de Cardenas 567  
Col. Narvarte, Mexico, D.F. C.P. 03020

Cheryl A. Tritt  
Eric N. Richardson  
Morrison & Foerster  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

James M. Tobin  
Morrison & Foerster  
345 California Street  
San Francisco, California 94104

Kenneth Gross  
General Counsel  
Columbia Communications Corporation  
7200 Wisconsin Avenue  
Suite 701  
Bethesda, Maryland 20814